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Supreme Court, U.S.
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No. 05-

IN THE

Supreme Court of the United States

WILLIAM HATCHER,

Petitioner,

v.

F. GATES PEED, JUDGE, SUPERIOR COURT OF EFFINGHAM COUNTY, GEORGIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Eleventh Circuit affirmed the district court's dismissal of Petitioner's suit for damages pursuant to 42 U.S.C. § 1983, filed following a hearing on a motion for a temporary protective order sought by Petitioner's adult daughter. At the conclusion of the hearing, Respondent Judge F. Gates Peed ordered Petitioner taken into custody even though Petitioner was on bond and had neither violated the terms of his bond nor committed a contempt. Respondent refused to state why Petitioner was being arrested and refused to entertain the issue of bail. Respondent then ordered that Petitioner's adult daughter have visitation with her two (2) half-brothers, even though the issue of visitation and custody was not before the court, the children's mother was not a party to the action, and no theory of law would provide for such visitation. In affirming the district court's dismissal of Petitioner's suit, the Eleventh Circuit misapplied this Court's rulings regarding judicial immunity, which has become common at the circuit court level.

Two (2) questions are presented:

1. Does a state court judge lose the protection of judicial immunity by departing from his judicial function when he interrupts a civil hearing to conduct independent investigation of one of the litigants without informing the parties of the action, orders the arrest of the party without enunciating a reason therefore, refuses to entertain the issue of bail, and arranges for the issuance of a warrant by the district attorney upon the sheriff's refusal to prepare a warrant for the judge?

2. Does a judge act in the clear absence of all jurisdiction for purposes of judicial immunity by entering a custody order on children whose custody is not an issue before the court, was not enumerated as a claim for relief, cannot be legally ordered, where the mother of the children is not a party to any proceeding?

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Appendix B — Order Of The United States District Court For The Southern District Of Georgia, Statesboro Division Dated December 21, 2004 ..... 3a

OPINION BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is unpublished. The opinion was entered and filed May 10, 2005. The decision of the Eleventh Circuit affirmed the December 21, 2004 judgment of the United States District Court for the Southern District of Georgia dismissing Petitioner's suit.

STATEMENT OF JURISDICTION

The Eleventh Circuit's opinion was rendered on May 10, 2005. This Court's jurisdiction is invoked pursuant to 28 U.S.C.A. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title 42, United States code, Section 1983

Civil action for deprivation of rights

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory of the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial

> capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable to the District of Columbia shall be considered a statute of the District of Columbia.

As a component of the cause of action provided by that statute, due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution also are implicated.

STATEMENT OF THE CASE

1. Petitioner William Hatcher asserts in this case that judicial immunity does not protect the actions of a state court judge who acts as a prosecutor and who enters an order on a matter not before the court in a clear absence of all jurisdiction. Petitioner commenced this action on May 27, 2004 by filing his complaint in the United States District Court for the Southern District of Georgia alleging two (2) counts against Respondent for damages pursuant to 42 U.S.C. § 1983. On December 21, 2004 the district court entered its order and judgment dismissing Petitioner's suit on principles of judicial immunity. Plaintiff thereafter timely noticed his appeal to the United States Court of Appeals for the Eleventh Circuit on January 4, 2005. That court affirmed by judgment entered May 10, 2005.

2. Petitioner William Hatcher is married to Stephanie Hatcher and together they have two (2) sons, ages 10 and 12. Petitioner also has a daughter by a prior relationship, April Hatcher. In 1998 at the age of 15, April came to live with Petitioner, his wife and their two sons.

In the autumn of 2002, April left for college at Georgia Southern University. However, at the end of her freshman year she had not maintained the requisite grade point average to keep her academic scholarship. She moved back to Rincon, Georgia to live with Plaintiff and his family, and commuted to school. Under this arrangement, her grades improved somewhat, but she claimed that she could not study because of all the noise in the house. Commencing in the autumn of 2003 Petitioner permitted April to live in a house in Effingham County, Georgia owned by his mother but managed by Petitioner. April Hatcher did not have to pay rent, and Petitioner paid her utilities. April continued to commute to college.

In the first week of April, 2004 Petitioner could not reach April by telephone for several days. On Saturday, April 10, 2004 Petitioner took his two (2) sons to a Boy Scout activity near the house, and stopped to check on April. As Petitioner was speaking to his daughter a young man jumped out of the bedroom closet.

Petitioner did not know the identity of this young man, but knew that it was not her boyfriend. Petitioner retrieved his pistol from his vehicle as the young man was about to leave, and allegedly pointed the gun at the young man demanding to know his name. The young man shortly thereafter called the Effingham County Sheriff's office, and a report was taken based on a claim of aggravated assault. By that evening, however, April Hatcher was claiming that her father had been sexually assaulting her for five (5) years.

The Sheriff's Office investigated the incident and April Hatcher's allegations over the next several weeks. Petitioner voluntarily went to the Sheriff's Office and gave a statement,

as did his wife and the young man in the closet, one Brian Saxton. On April 23, 2004 Detective Rhodes of the Effingham County Sheriff's Office obtained criminal warrants from the Magistrate Court of Effingham County against Petitioner for misdemeanor sexual battery against April Hatcher and felony aggravated assault against Brian Saxton. Petitioner turned himself in to Effingham County authorities on April 29, 2004 and by agreement was permitted to post bond in the amount of $5,000.00.

3. On April 12, 2004 April had filed a petition for a temporary protective order against Petitioner in the Superior Court of Effingham County. This domestic relations petition came on for hearing on May 26, 2004 in the Superior Court of Effingham County, Georgia before Respondent F. Gates Peed as the presiding judge. During the hearing the Respondent called a recess. During this recess, without notice to the parties, Respondent undertook to investigate the status of criminal charges against William Hatcher. Respondent Peed, at a minimum, engaged in ex parte inquiry with an investigator in the district attorney's office, Rick Dailey. What else Respondent did during this recess is not yet known.

Significantly, April Hatcher did not testify in presenting her case. Petitioner called her to the stand for cross-examination. William Hatcher did not testify.

At the conclusion of the evidence, Respondent ordered the deputies present in the courtroom to take William Hatcher into custody. Respondent would not give any basis for this order. Respondent would not state for what offense William Hatcher was being arrested. Respondent had not violated the terms of his bond. He had not committed a contempt of court. No warrants were extant.